



FINAL DETERMINATION

IN THE MATTER OF	:	
	:	
BRIAN EDWARD BOYER,	:	
Requester	:	
	:	
v.	:	Docket No.: AP 2021-1404
	:	
MOUNT CARMEL BOROUGH	:	
POLICE DEPARTMENT,	:	
Respondent	:	

The Office of Open Records (“OOR”) received the above-captioned appeal under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.* Upon review of the file, the appeal is **dismissed** for the following reason:

On July 13, 2021, Brian Edward Boyer (“Requester”), an inmate at SCI-Mahanoy, submitted a RTKL request (“Request”) to the Mount Carmel Borough Police Department (“Department”), seeking records of various communications by named Borough Police Officers.

On July 15, 2021,¹ the Requester appealed to the Office of Open Records (“OOR”), arguing that the Request was deemed denied, 65 P.S. § 67.901, and stating grounds for disclosure. The

¹ Although the OOR received the appeal on July 20, 2021, the appeal is considered filed on the date that it is placed into the mail pursuant to the “prison mailbox rule”; therefore, the appeal was deemed filed on July 15, 2021. *Commonwealth v. Jones*, 700 A.2d 423, 426 (Pa. 1997).

OOR invited both parties to supplement the record and directed the Department to notify any third parties of their ability to participate in this appeal. *See* 65 P.S. § 67.1101(c).

On July 23, 2021, the Department submitted a position statement arguing that it had provided the Requester with notice that the Department was invoking a thirty-day extension of time to respond to the Request pursuant to Section 902(b) of the RTKL, 65 P.S. § 67.902(b). The Department also submitted the attestation made under penalty of perjury from Chief of Police, Christopher Buhay. Chief Buhay attests that, “[o]n July 13, 2021 I received the [RTKL] Request from [the Requester]” and “[o]n July 13, 2021, I invoked a 30-day extension of time by mailing a [RTKL] Extension Notice to [the Requester].” Under the RTKL, an affidavit may serve as sufficient evidentiary support to withhold requested records. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). Subsequently, in response to the OOR’s request for clarification, the Department submitted a copy of the July 13, 2021 extension notice mailed by Chief Buhay.

Section 901 of the RTKL states that “[t]he time for response shall not exceed five business days from the date the written request is received by the open-records officer for an agency.” 65 P.S. § 67.901; *see also Commonwealth v. Donahue*, 98 A.3d 1223 (Pa. 2014). The evidence presented by the Department demonstrates that the Request was received by the Open Records Officer on July 13, 2021, and within five business days of receiving the Request, it timely notified the Requester of its intent to invoke a thirty-day extension. *See* 65 P.S. §§ 67.902(a); 67.902(b)(1). Because the Department timely invoked its thirty-day extension to respond on July 13, 2021, the appeal is **dismissed as premature**.²

² Upon receipt of the Department’s response or a deemed denial of the Request, the Requester may file a new appeal with the OOR pursuant to the requirements of 65 P.S. § 67.1101(a).

The file is now closed, and no further action will be taken. This Final Determination is binding on the parties. Within thirty days of the mailing date of this Final Determination, either party may appeal to the Northumberland County Court of Common Pleas. *See* 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules as per Section 1303 of the RTKL. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.³ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: July 29, 2021

/s/ Kelly C. Isenberg

KELLY C. ISENBERG, ESQ.
APPEALS OFFICER

Sent to: Brian Edward Boyer/MC3876 (via U.S. Mail only);
Frank Lavery, Esq. (via email only);
Chief Christopher Buhay, AORO (via email only)

³ *See Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).